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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 BRUCE DAVIS,

12 Petitioner,

2:03-cv-0426-GEB-GGH-P

13 vs.

14 K. PROSPER, et al.,

15 Respondent.

ORDER

16 _____/
17 Petitioner has timely filed a notice of appeal of this
18 court's August 22, 2005, denial of his application for a writ of
19 habeas corpus. Before petitioner can appeal this decision, a
20 certificate of appealability must issue. 28 U.S.C. § 2253(c);
21 Fed. R. App. P. 22(b).

22 A certificate of appealability may issue under 28
23 U.S.C. § 2253 "only if the applicant has made a substantial
24 showing of the denial of a constitutional right." 28 U.S.C.
25 § 2253(c)(2). The certificate of appealability must "indicate
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1 which specific issue or issues satisfy" the requirement. Id.
2 § 2253(c) (3) .

3 A certificate of appealability should be granted for
4 any issue that petitioner can demonstrate is "'debatable among
5 jurists of reason,'" could be resolved differently by a different
6 court, or is "'adequate to deserve encouragement to proceed
7 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
8 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

9 Petitioner has made a substantial showing of the denial
10 of a constitutional right in the following issues presented in
11 the instant petition: 1) petitioner's motion to sever was denied
12 in violation of his right to due process; 2) petitioner was
13 denied his right to present evidence and confront witnesses in
14 violation of the Sixth Amendment; 3) inherently suggestive
15 photographic identification evidence was admitted in violation of
16 the Fourteenth Amendment; and 4) there was insufficient evidence
17 in violation of the Fourteenth Amendment.

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24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
26 certificate of appealability is the same as the standard that
applies to issuance of a certificate of probable cause.
Jennings, 290 F.3d at 1010.

1 Accordingly, IT IS HEREBY ORDERED that a certificate of
2 appealability is issued in the present action.

3 Dated: September 16, 2005

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5 /s/ Garland E. Burrell, Jr.
6 GARLAND E. BURRELL, JR.
7 United States District Judge
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